

CHAPTER 13-02-14 LIFE INSURANCE

Section

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13-02-14-01. Definitions. "Key person" means the chairman of the board, the president, each vice president, the cashier, the secretary, the treasurer, or any other employee or director of a bank or bank holding company whose absence for an extended period of time would result in a significant loss of net income for the bank, unless such key person is excluded, by resolution of the board of directors or by the bylaws of the bank or bank holding company, from participation, other than in the capacity of a director, in policymaking functions of the bank or bank holding company, and the key person does not actually participate in policymaking functions of the bank or bank holding company.

History: Effective April 1, 1992; amended effective April 1, 2003.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-02

13-02-14-02. Authority to purchase life insurance. Banks may purchase and hold an interest in individual or group life insurance policies on the life of its key persons, directors, and borrowers, and may purchase life insurance in connection with compensation and benefit plans for its officers, directors, and employees, subject to the limitations in this chapter. The bank is not authorized to purchase policies if the board's basis for its insurable interest is primarily based upon the employee or director being a shareholder of the bank or bank holding company. Funding for the payment of compensation and benefit plans may be made or split in a joint manner between the bank, employee, director, or bank holding company as in "split dollar" or other insurance plans.

History: Effective April 1, 1992; amended effective April 1, 2003.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-02

13-02-14-03. Limitations.

1. A bank is not authorized to purchase life insurance policies for the bank's own account as an investment.
2. Except as provided in subsections 3 and 4, the bank's purchase of life insurance policies underwritten by one company cannot exceed fifteen percent of the bank's tier 1 capital.

3. The bank's purchase of any life insurance policy underwritten by one company for key person purposes cannot exceed twenty-five percent of the bank's capital stock and surplus as measured by the policy's cash surrender value.
4. The bank's purchase of any life insurance policy underwritten by one company on a director cannot exceed ten percent of the bank's capital stock and surplus as measured by the policy's cash surrender value.
5. The bank's purchase of life insurance policies from all carriers in the aggregate cannot exceed twenty-five percent of the bank's tier 1 capital. This limit shall apply to the initial purchase of life insurance policies as measured by the amount of premium and to subsequent purchases as measured by the sum of the cash surrender value of earlier purchases plus the amount of premium committed toward subsequent purchases.
6. The bank is not authorized to purchase life insurance policies for the primary purpose of providing estate planning benefits for bank insiders unless it is part of a reasonable compensation package.
7. The bank's authority to hold life insurance on any key person ceases when the key person is no longer employed by the bank, or no longer meets the definition of key person.
8. The bank's authority to hold life insurance on a director ceases when that director is no longer a member of the board of directors and there is no liability or obligation under director compensation and benefit plans.
9. The bank's authority to purchase life insurance on borrowers is subject to the following:
 - a. The face value of the life insurance policy cannot exceed the borrower's obligation to the bank.
 - b. The bank has not charged off nor is expected to charge off the borrower's obligation.
10. In purchasing life insurance in connection with employee compensation and benefit plans, the bank may retain the policies after the insured's employment is terminated, provided the bank has continuing liabilities or obligations under such plans.

History: Effective April 1, 1992; amended effective April 1, 2003.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-02

13-02-14-04. Financial information. Prior to purchasing a policy, the board of directors shall evaluate the financial condition and rating, if any, of the insurance company by acquiring adequate and current financial information. The board shall,

on at least an annual basis, continue to evaluate the company's financial condition and rating.

History: Effective April 1, 1992.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-02

13-02-14-05. Documentation.

1. In purchasing life insurance for key person purposes, the bank's board of directors must adequately document in its minutes the basis for its insurable interest and the basis for the amount of insurance. The bank's board of directors must also document in its minutes the basis for determining how that employee or director meets the definition of a key person.
2. In purchasing life insurance in connection with compensation and benefit plans for employees, officers, and directors, the bank's board of directors must approve and document such plans or programs including the reasonableness of the plans or programs.

History: Effective April 1, 1992; amended effective April 1, 2003.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-02

13-02-14-06. Waiver. The state banking board or commissioner may waive any limitation or restriction in this chapter.

History: Effective April 1, 1992; amended effective April 1, 2003.

General Authority: NDCC 6-01-04

Law Implemented: NDCC 6-03-02, 6-03-38